

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 35 of 1997

in

SPECIAL CIVIL APPLICATION No 9619 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE H.L.GOKHALE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DINESHKUMAR G KHANKAR

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Petitioner
SERVED BY DS for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 3
MR RJ OZA for Respondent No. 4

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE H.L.GOKHALE

Date of decision: 01/04/97

ORAL JUDGEMENT (C.K.THAKKER J.)

This appeal is directed against an order passed by the learned Single Judge summarily dismissing Special Civil Application No. 9619 of 1996 on December 16, 1996.

2. Shortly stated the facts are that a combined competitive examination was held in 1992 to select candidates for appointment as Assistants and Sales Tax Inspectors. On the basis of competitive examination, a select list was prepared on July 30, 1993 which was to remain in operation till a new list was to be prepared and published. It is not disputed by and between the parties that the appellant was selected and though he could not get appointment, his name was included in the wait list at Sr.No.29. 50 posts of Assistants and 37 posts of Sales Tax Inspectors were to be filled in. Thus, 87 persons were to be appointed on the basis of the competitive examination. It is also not disputed that new list was prepared and published on November 8, 1996.

3. It is the case of the appellant that out of 87 officers to be appointed, some persons did not come forward and hence, appointments were made from the wait list. It is asserted by the appellant that various appointments were made even after the wait list lapsed in November 1996. According to the appellant, some appointments were made as late as on 3rd December 1996. They were ten in number and even thereafter seventeen posts were vacant; twelve of Assistants and five of Sales Tax Inspectors. Out of seventeen posts eight were of general category whereas nine were of reserved class. According to the appellant, he would come at No.4 or 5 and in any case at No.8 in the wait list and, hence, his case was required to be considered.

4. The learned Single Judge, however, upheld the contention of the respondents that as soon as a new select list was prepared and published, the old list lapsed. Therefore, in the eye of law, there was no valid subsisting wait list in force and the appellant could not pray for a writ of mandamus.

5. We have heard Mr. Paresh Upadhyay, learned counsel for the appellant at considerable length, as also Mr.D.A.Bambhania, learned Assistant Government Pleader for the State and Mr.R.J.Oza, for Gujarat Public Service Commission.

6. Mr.Upadhyay has raised various contentions. He also placed reliance on certain additional material in Letters patent Appeal which was not on record at the time

when the petition was heard. When the petition was argued before the learned Single Judge, no affidavit was filed by the State. After notice was issued in this LPA, the State Government has filed an affidavit. Gujarat Public Service Commission was not a party-respondent before the learned Single Judge but in Letters Patent Appeal, Gujarat Public Service Commission was joined as party, and the Commission has also filed an affidavit.

7. Looking to the record of the petition, as well as additional record, which is produced alongwith Letters Patent Appeal, it is clear that as per the case of the appellant, some appointments were made even after the list stood lapsed in November 1996. This factual position could not be denied and was not denied by the respondent authorities. The respondents, however, heavily relied on the affidavits and the record from which it was submitted that the list was made operative till new list was prepared and published. The action of the authorities was thus in consonance with statutory rules framed under the proviso to Art.309 of the Constitution of India. Rule 15(4) is material of our purpose. It reads as under:

"(4)(a) The result of the examination shall be divided into three parts as under:-

Part I. The names of the candidates to be recommended to Government;

Part II. The names of the candidates to be kept on waiting list till the result of the next examination is published.

Part III.- The names of the candidates who are not included in Part I and II above.

(b) Name of the candidates contained in Parts I and II, shall be published in the Government Gazette. All the three parts of the result shall be displayed on the Notice Board of the Commission."

(Emphasis supplied)

8. Thus, as per part II, the names of the candidates should be kept on waiting list till the result of the next examination is published.

9. Since the rule is statutory, it has to be given effect. The question, therefore, is whether old list can be operated by the respondent authorities after new list was prepared and published. If this question is

replied in affirmative, the appellant cannot be denied consideration as his name appears in the waiting list. If, on the other hand, the list cannot be operated, the appellant has no case inasmuch as statutory rules enjoin the authorities to operate that list till new list is prepared and published i.e. upto November 8, 1996.

10. Now, the main contention of the learned counsel for the appellant is that some appointments were made in December 1996 and one appointment is still to be made from the list of 1993. The respondent authorities, however, made their position clear by stating that the list was not operated after November 8, 1996. It was operated before that date and recommendations were made, but as actual appointments were not made, they were made in December 1996 and one appointment is yet to be made. It was, however, categorically stated that all appointments were to be made on the basis of recommendation made in September 1996, i.e. prior to preparation and publication of the new list.

11. The State Government vide its affidavit-in-reply filed by the Under Secretary Mr. Mirza, states in para 5;

"5. I say and submit that G.P.S.C. declared the result on 8.11.1996 and the General Administration Department has not requisitioned any candidate's name from G.P.S.C. after the declaration of the result. It is also the case of the administration that nothing any short has been done to circumvent the factual position by making misleading statement as to no appointment were made after the declaration of the result. I respectfully say and submit that the letter dated 3.12.1996 which is annexed at Annexure.D to this petition is not an appointment order. The 10(ten) candidates mentioned in this letter have been appointed as supernumerary Assistants and have been sent to Pre-service training from 22.10.1996 vide Govt. Memo G.A.D. dated 25.9.1996 as required under G.Rr.G.A.D. dated 22.3.1965 amended from time to time. These 10 candidates who joined the training on 22.10.1996 have been allotted to various departments vide letter dated 3.12.1996. It has specifically been mentioned in this letter that training class for appointment as Assistant has been started from 22.10.1996 and in para 3 of the said letter instruction has been given to the departments to pay them the pay and allowance from 22.10.1996

i.e. from the date of the training. This shows that the said 10 candidates were given placement for training and appointment vide Govt. Memo dated 25.9.96 and not by letter dated 3.12.1996 as pointed by the petitioner. "

Likewise, in affidavit of Mr.J.L.Parmar, Deputy Secretary, Gujarat Public Service Commission, it was stated;

" It appears that the State Government has made requisition and sought recommendation of names from the Gujarat Public Service Commission by operating waiting list for the reason that some of the candidates whose names were recommended by the Gujarat Public Service Commission have not joined the duty by accepting the appointment. I submit that, as it is reported by the State Government under its letter dated 25.9.1996 addressed to the Gujarat Public Service Commission, the Gujarat Public Service Commission has recommended the names of total 124 candidates in response to the requisition made by the State Government and out of the said 124 candidates, names of 37 candidates are deleted from the list on account of non-joining the service by them and, hence, 86 candidates have been allotted to the respective departments and given appointment by the State Government. It is also stated in the said letter that one candidate belonging too S.C. who is placed at Sr.no.28 in the waiting list, could not be allocated for want of availability of post in the category of S.C. A copy of the letter dated 25.9.1996 along with a statement showing the requisition made by the State Government and the names recommended by the Gujarat Public Service Commission from time to time for appointment to the post of Assistant/Sales Tax Inspector are enclosed hereto and marked as Annexure."I" collectively."

Mr.Upadhayay drew our attention to a decision of the Hon'ble Supreme Court in Gujarat State Dy. Executive Engineers' Association v. The State of Gujarat and others,(1994) supp (2) SCC 591. It has, however, no application to the facts on the case on hand inasmuch as, it is clearly observed by Their Lordships of the Supreme Court that a select list would operate subject to statutory rules for the time being in force.

In the instant case, as stated above, statutory rules are very much in force framed under Proviso to Art.309 of the Constitution wherein it has been specifically provided that a select list will remain in operation till a new list is prepared and published. As the new list was already prepared and published, in our opinion, no grievance can be made.

It was argued relying on a circular dt. January 16, 1969 that it was obligatory on the part of the State Government to finalise the process of making appointment within the stipulated period. Firstly, this point was not argued before the learned single Judge. Secondly, the circular is in the nature of administrative instructions. Whether or not, such instructions confer justiciable rights depends upon the facts and circumstances of each case. Thirdly, it is well settled law that administrative instructions and/or directions cannot run contrary to or be inconsistent with statutory rules. These instructions, therefore, cannot be construed to mean that if statutory rules provide a particular life time to a select list, by reading and interpreting a circular, life of such select list can be extended. It would be virtually violating statutory rules which obviously a court of law cannot do. When statutory rules provide life time to a select list, a circular cannot get the life extended.

We, therefore, do not see any reason to interfere with the order passed by the learned single Judge and dismiss the appeal. Accordingly, LPA is dismissed. Notice is discharged. No order as to costs.

Dt. 1.4.1997. (C.K.THAKKER J)

(H.L.GOKHALE J)